

THE PUBLIC CLAMOR DOCTRINE

WHEN CAN YOU BASE DECISIONS ON
PUBLIC COMMENT?

UCIP PLANNING & ZONING CONFERENCE

April 29, 2010

1

PUBLIC CLAMOR

- Not public comment
- Connotes a degree of irrationality or emotion
- Synonymous with hubbub, rumpus, tumult, and din

Harmon City v. Draper City, 2000 UT App 31, ¶ 27 n. 15, 997 P.2d 321

2



3

THE DOCTRINE

“Citizen opposition is a consideration which must be weighed, but cannot be the sole basis for the decision to deny.”

Davis County v. Clearfield City, 756 P.2d 704, 712 (Utah Ct. App. 1988)
(quotation omitted)

“[T]he consent of neighboring landowners may not be made a criterion for the issuance or denial o[f] a conditional use permit,”

Thurston v. Cache County, 626 P.2d 440, 445 (Utah 1981)

4

THE DOCTRINE

APPLICATION DEPENDS ON CAPACITY

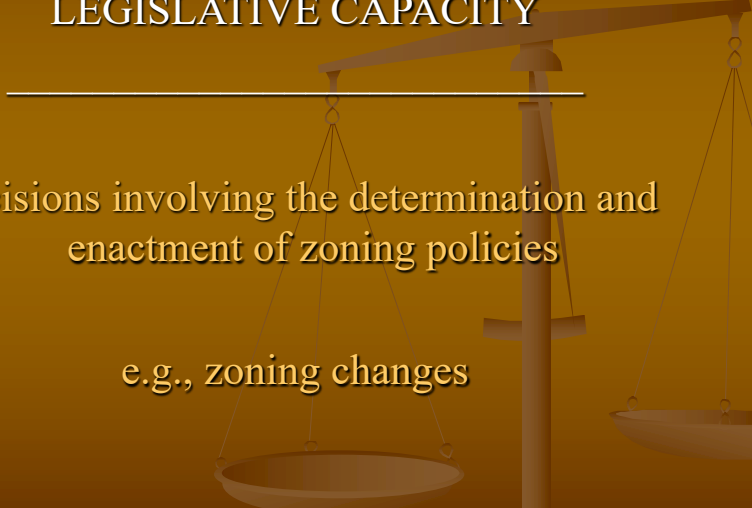


Legislative
OR
Administrative/Quasi-judicial

5

THE DOCTRINE

LEGISLATIVE CAPACITY



Decisions involving the determination and
enactment of zoning policies

e.g., zoning changes

6

THE DOCTRINE

QUASI-JUDICIAL/EXECUTIVE CAPACITY

Review of government decisions to correct
specific errors

e.g., review of grant of a conditional use permit

7

THE DOCTRINE

ADMINISTRATIVE CAPACITY

All other decisions

e.g., grants/denials of conditional use permits,
variances, and administrative interpretations of
the zoning ordinance

8

THE DOCTRINE

LEGISLATIVE CAPACITY

The public clamor doctrine does not apply when government entities act in legislative capacities

Harmon City, 2000 UT App 31, ¶ 27

9

THE DOCTRINE

LEGISLATIVE CAPACITY

Government officials may rely on citizen concerns

Harmon City, 2000 UT App 31, ¶ 26

“It is beyond question . . . that public hearings and citizen comments are a legitimate source of information . . . to consider in making legislative decisions.”

Bradley, 2003 UT 16, ¶ 28

10

THE DOCTRINE



11

THE DOCTRINE

Legislative decisions
still must not violate
constitutional rights.



12

THE DOCTRINE

ADMINISTRATIVE OR QUASI-JUDICIAL/EXECUTIVE CAPACITY

The doctrine applies ...

BUT ...

13

THE DOCTRINE

ADMINISTRATIVE OR QUASI-JUDICIAL/EXECUTIVE CAPACITY

“[T]here is no impropriety in the solicitation of, or reliance upon, information which may be furnished by other landowners in the vicinity of the subject property at a public hearing.”

Thurston, 626 P.2d at 445

14

THE DOCTRINE ADMINISTRATIVE OR QUASI-JUDICIAL/EXECUTIVE CAPACITY

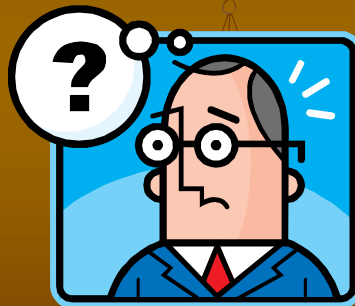
“[T]here is no impropriety in the solicitation of, or reliance upon, **information** which may be furnished by other landowners in the vicinity of the subject property at a public hearing.”

Thurston, 626 P.2d at 445

15

THE DOCTRINE

What does this mean?



16

CASES

- *Thurston v. Cache County*, 626 P.2d 440 (Utah 1981)
- *Davis County v. Clearfield City*, 756 P.2d 704 (Utah Ct. App. 1988)
- *Stucker v. Summit County*, 870 P.2d 283 (Utah Ct. App. 1994)
- *Ralph L. Wadsworth Construction v. West Jordan City*, 2000 UT App 49, 999 P.2d 1240
- *Uintah Mountain RTC, L.L.C. v. Duchesne County*, 2005 UT App 565, 127 P.3d 1270

17

THE PUBLIC CLAMOR DOCTRINE

Except when a government entity acts in a legislative capacity, it may rely on information provided through public comment only if it is supported by credible evidence.

18

THE PUBLIC CLAMOR DOCTRINE

In other words ...

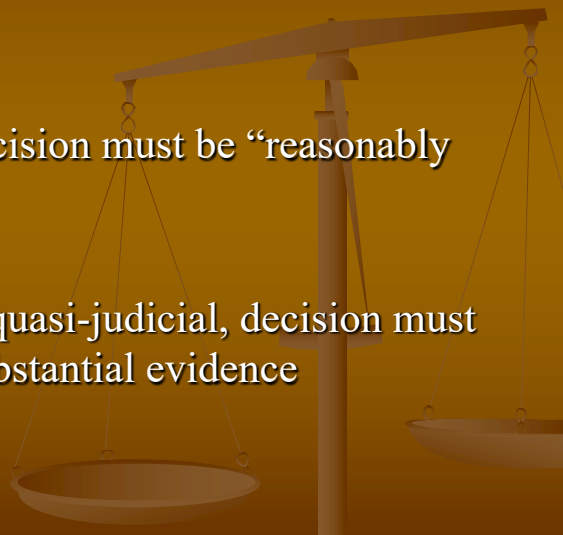
The arbitrary and capricious test



19

THE ARBITRARY AND CAPRICIOUS TEST

- If legislative, decision must be “reasonably debatable”
- If administrative/quasi-judicial, decision must be supported by substantial evidence



20

THE PUBLIC CLAMOR DOCTRINE

EXAMPLES

- Yelling at public hearing
- Petitions
- NIMBY complaints
- Testimony providing or corroborated by substantial evidence

21



22



23